

**In re: HARTFORD PACKING CO., INC.
PACA Docket No. D-01-0010.
Order Granting Motion to Withdraw Appeal.
Filed October 5, 2001.**

Motion to withdraw appeal petition.

The Judicial Officer (JO) granted Respondent's motion to withdraw its appeal petition. The JO stated that, while a party's motion to withdraw its own appeal petition is generally granted, a withdrawal of an appeal petition is not a matter of right. The JO stated that, based on the limited record before him, he found no basis for denying Respondent's motion to withdraw its appeal petition. Based on his granting Respondent's motion to withdraw its appeal petition, the JO concluded that Chief Administrative Law Judge James W. Hunt's Decision Without Hearing by Reason of Default filed in the proceeding on September 5, 2001, was the final decision in the proceeding.

Ruben D. Rudolph, Jr., for Complainant.
Respondent, Pro se.
Initial decision issued by James W. Hunt, Chief Administrative Law Judge.
Order issued by William G. Jenson, Judicial Officer.

The Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a "Complaint" on March 1, 2001. Complainant instituted the proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA]; the regulations promulgated pursuant to the PACA (7 C.F.R. pt. 46); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that: (1) during the period February 4, 1999, through October 5, 1999, Hartford Packing Co., Inc. [hereinafter Respondent], failed to make full payment promptly to nine sellers of the agreed purchase prices, or the balances thereof, in the total amount of \$535,244.36 for 309 lots of vegetables which Respondent purchased, received, and accepted in interstate commerce; and (2) Respondent's failures to make full payment promptly of the agreed purchase prices, or the balances thereof, for perishable agricultural commodities that Respondent purchased, received, and accepted in interstate commerce constitute willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) (Compl. ¶¶ III, IV).

The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and a service letter on March 5, 2001.¹ Respondent failed to answer

¹ See United States Postal Service Domestic Return Receipt for Article Number PO93174978.

the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On April 4, 2001, the Hearing Clerk sent a letter to Respondent informing Respondent that its answer to the Complaint had not been received within the time required in the Rules of Practice.²

On April 5, 2001, 31 days after the Hearing Clerk served Respondent with the Complaint, Respondent filed a letter dated April 2, 2001, in response to the Complaint. On August 3, 2001, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a “Motion for Decision Without Hearing By Reason of Default” [hereinafter Motion for Default Decision] and a proposed “Decision Without Hearing By Reason of Default” [hereinafter Proposed Default Decision]. On August 15, 2001, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Respondent filed objections to Complainant’s Motion for Default Decision and Complainant’s Proposed Default Decision.

On September 5, 2001, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] issued a “Decision Without Hearing by Reason of Default”: (1) finding that, during the period February 4, 1999, through October 5, 1999, Respondent failed to make full payment promptly to nine sellers of the agreed purchase prices, or the balances thereof, in the total amount of \$535,244.36 for 309 lots of vegetables which Respondent received, accepted, and sold in interstate commerce; (2) concluding that Respondent’s failures to make full payment promptly to nine sellers of the agreed purchase prices, or the balances thereof, in the total amount of \$535,244.36 for 309 lots of vegetables, which Respondent received, accepted, and sold in interstate commerce, constitute willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)); and (3) ordering the publication of the facts and circumstances set forth in the Decision Without Hearing by Reason of Default (Decision Without Hearing by Reason of Default at 2-3).

On September 18, 2001, Respondent appealed to the Judicial Officer.³ On September 27, 2001, Respondent filed a letter requesting that it be allowed to withdraw its appeal petition [hereinafter Motion to Withdraw Appeal Petition].⁴ On October 3, 2001, the Hearing Clerk transmitted the record of the proceeding

²Letter dated April 4, 2001, from Joyce A. Dawson, Hearing Clerk, to Hartford Packing Co., Inc.

³See letter dated September 14, 2001, from Robert C. Downs to the Chief ALJ.

⁴See letter dated September 27, 2001, from Robert C. Downs to Jane E. Servais.

to the Judicial Officer for a ruling on Respondent's Motion to Withdraw Appeal Petition.

A party's motion to withdraw its own appeal petition is generally granted; however, withdrawal of an appeal petition is not a matter of right. In considering whether to grant a motion to withdraw an appeal petition, the Judicial Officer must consider the public interest.⁵ Based on the limited record before me, I find no basis for denying Respondent's Motion to Withdraw Appeal Petition. Further, on October 3, 2001, Ruben D. Rudolph, Jr., Complainant's counsel, by telephone, informed the Office of the Judicial Officer that Complainant does not oppose Respondent's Motion to Withdraw Appeal Petition.

For the foregoing reasons, the following Order should be issued.

Order

Respondent's Motion to Withdraw Appeal Petition is granted. The Chief ALJ's Decision Without Hearing by Reason of Default filed September 5, 2001, is the final decision in this proceeding. The Order issued by the Chief ALJ in the Decision Without Hearing by Reason of Default filed September 5, 2001, shall become effective 14 days after service of this Order on Respondent.

⁵ See *Ford Motor Co. v. NLRB*, 305 U.S. 364, 370 (1939) (stating where the NLRB petitions for enforcement of its order against an employer and jurisdiction of the court has attached, permission to withdraw the petition rests in the sound discretion of the court to be exercised in light of the particular circumstances of the case); *American Automobile Mfrs. Ass'n v. Commissioner, Massachusetts Dep't of Envtl. Prot.*, 31 F.3d 18, 22 (1st Cir. 1994) (stating the court of appeals has broad discretion to grant or deny voluntary motions to dismiss appeal); *HCA Health Services of Virginia v. Metropolitan Life Ins. Co.*, 957 F.2d 120, 123 (4th Cir. 1992) (stating an appellant's motion to voluntarily dismiss its own appeal is generally granted, although courts of appeal have discretionary authority not to dismiss the case in appropriate circumstances); *United States v. State of Washington, Dep't of Fisheries*, 573 F.2d 1117, 1118 (9th Cir. 1978) (stating the court has discretionary authority to decline to grant the appellants' motion to dismiss their own appeal); *In re Vermont Meat Packers, Inc.*, 48 Agric. Dec. 158 (1989) (stating withdrawal of appeal is not a matter of right); *In re Smith Waller*, 34 Agric. Dec. 373, 374 (1975) (stating the rules of practice do not permit a party to withdraw an appeal as a matter of right; in considering whether to grant a motion to withdraw an appeal, the Judicial Officer must consider the public interest); *In re Henry S. Shatkin*, 34 Agric. Dec. 296, 297 (1975) (stating the rules of practice do not permit a party to withdraw an appeal as a matter of right; in considering whether to grant a motion to withdraw an appeal, the Judicial Officer must consider the public interest).